



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

September 5, 2001  
AO-01-21

BY FAX AND FIRST CLASS MAIL

Mayor Raymond V. Mariano  
14 Fox Hollow  
Worcester, MA 01605

Re: Retirement Testimonial

Dear Mayor Mariano:

This letter is in response to your July 19, 2001 request for an opinion regarding testimonials honoring political candidates.

You are currently the Mayor of the City of Worcester. Your term expires at the end of this year and you are not seeking re-election. The political committee that has been established on your behalf will be dissolved at the end of your term, as will your committee's campaign account.

Several friends wish to organize a testimonial in your honor to recognize your twenty-four year career as an elected public servant. You have tentatively agreed to allow the testimonial with the understanding that all funds raised, after expenses, would go to local charities.

You have several questions regarding the impact of the campaign finance law, M.G.L. c. 55, on the testimonial. You are not sure how donations for the testimonial should be received or whether corporations may sponsor the event. As a result, you have presented the following three options that are being considered for the testimonial:

1. The event is hosted by a group of friends. Tickets for the event are sold to individuals and sponsorships are solicited from local businesses. The money is collected by the host group of friends, deposited in a special account and turned over to the area charities once expenses have been paid. If it makes a difference, you state that the charities could be identified in advance of the event.

2. The event is hosted by a group of friends. Tickets are sold to individuals, but no business sponsorship is solicited. All funds are deposited in the Mariano campaign account following accepted guidelines. Distribution to charities is made following the payment of expenses.
3. The event is hosted by one or more local charities. The charities collect the money for ticket sales and business sponsorships and account for it following their normal procedures.

Each of these options relates to a broader issue regarding the circumstances under which a testimonial is subject to the campaign finance law. I have not discussed each option in the form and order you have presented them, choosing instead to address the larger issue and your particular concerns in the following discussion.

A testimonial is an event held in appreciation of an individual's service or achievement. Such tributes are subject to the campaign finance law where they are given in honor of a political candidate<sup>1</sup> and involve "fundraising activity ... held on behalf of" the candidate. This occurs when the candidate or his political committee derives "money or anything of value from the event." Under these circumstances the proceeds and expenses related to the testimonial are deemed to be reportable "contributions" and "expenditures" *received or made "on behalf of the candidate"* and all of the provisions of the campaign finance law would need to be complied with. See M.G.L. c. 55, § 1.

If a candidate is the honoree of a testimonial but the candidate or his committee does not receive money or anything of value resulting from the testimonial, then the proceeds and expenses related to the testimonial would not be "contributions" or "expenditures" *received or made "on behalf of the candidate"* and thus would not fall under M.G.L. c. 55. Compare AO-95-25. (advising that a political committee may host a fundraiser to benefit a charitable organization where the charity is separate and distinct from the political committee and the political committee will not be involved in the on-going operations of the charity).

The phrase "anything of value" in the context of testimonials involves the candidate or committee receiving a material benefit, whether financial, political or otherwise, from the testimonial apart from the distinction of being the honoree of the event. This office recognizes that it is common for the hosts of a testimonial to present the guest of honor with a certificate, plaque or other token keepsake in appreciation of past service. Without more, such a gift will not be enough to subject a testimonial to the campaign finance law. A benefit will only be deemed "material," and therefore something of value, if it goes beyond that which is customarily accepted when someone is being recognized for past achievements.

Consistent with these principles, this office has advised that the proceeds of a testimonial held by a candidate's committee in honor of the candidate would be subject to the campaign finance law. See AO-84-15. We have also advised that the campaign finance law precluded a private group from

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<sup>1</sup> A "candidate" includes anyone who (1) holds elective public office at the time testimonial proceeds are raised or spent; (2) has, personally or through an agent, received campaign contributions or made expenditures to become elected or nominated for public office; (3) has a political committee organized on his behalf; or (4) has taken steps in accordance with the law to qualify for nomination or election to office. See M.G.L. c. 55, § 1. The campaign finance law would not apply to a testimonial for an individual who has left elected office and has dissolved his campaign account prior to the time that proceeds from the testimonial are raised or spent.

hosting a testimonial for a candidate where the proceeds of the event were to be used for a gift to honor the candidate. See AO-87-01.

These opinions would seemingly not apply to the testimonial contemplated in your honor because you have indicated that the proceeds of the tribute are intended for charity. The fundraising for the testimonial under those circumstances would be held not for your or your committee's benefit but "on behalf of" the charitable organizations the hosts of the testimonial wish to support. As suggested above, this type of fundraiser would not be subject to the campaign finance law as long as you or your political committee were not otherwise going to receive something of value as the result of the event.

Examples of situations where a candidate or political committee would be receiving something of value from a charitable testimonial include instances where (1) the charitable donations resulting from the testimonial are made in the candidate or political committee's name; (2) political contributions for your committee are to be solicited or received in conjunction with the event; or (3) the hosts of the testimonial use the event to advocate your nomination or election to public office in the future. In each of these instances, the testimonial would be subject to the campaign finance law even though the funds collected were for charity. In other words, to fall outside of the campaign finance law the testimonial must be a bona fide charitable fundraiser and not a political fundraiser or an event designed to confer a material benefit on you or your committee.

Assuming the event is to be a bona fide charitable fundraiser and no material benefit is being received by you or your committee, a group of your friends or local charities may host the testimonial in your honor without having to report financial activity or otherwise conform fundraising efforts to M.G.L. c. 55. If the testimonial is to go forward in this manner it is important that the hosts select the charities that will benefit from the testimonial before money or anything of value resulting from the testimonial is received or spent. The identities of the charities should then be disclosed on all communications with potential benefactors and attendees, including advertisements, solicitations and tickets. This will avoid confusion regarding whom the testimonial is "on behalf of."

If the organizers do not wish to select charities in advance or you or if your committee are to receive something of value as the result of the testimonial, then the fundraising associated with the event would be "on your behalf" and the testimonial should be run through your campaign account, either by committee members or a group of your friends who would be acting as agents of the committee. Of course, all provisions of the campaign finance law would then apply to such a testimonial. This means corporations may not contribute to or sponsor the event and contribution limits must be complied with.

In sum, the campaign finance law will not apply to the testimonial to be held in your honor as long as its sole purpose is as a bona fide charitable fundraiser. If you or your political committee are to derive money or anything of value as the result of the tribute, the event will be subject to M.G.L. c. 55 regardless of who hosted the event.

This opinion is issued on the basis of representations in your letter and is solely within the context of the campaign finance law.<sup>2</sup> I encourage you to contact us in the future if you have further questions about this opinion or any other aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS:bp

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<sup>2</sup> Please note that the hosts of the testimonial should contact the Attorney General's Division of Public Charities at (617) 727-2200 to ensure compliance with the laws relating to charitable fundraisers.